

STATE OF TENNESSEE
OFFICE OF THE
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February 12, 2004

Opinion No. 04-026

Interpretation of Tenn. Code Ann. §41-4-140

QUESTIONS

1. Does the Tennessee corrections institute (TCI) have the statutory duty to inspect detention facilities owned by political subdivisions of the state that hold both county and state prisoners and are operated by private companies?

2. Does the Tennessee corrections institute have the statutory duty to inspect all local detention centers or only those holding county prisoners?

OPINION

Tenn. Code Ann. §41-4-140(a)(3) requires TCI to inspect all local jails, lock-ups, workhouses, and detention facilities at least once a year, regardless whether those facilities house county prisoners, state prisoners, or both, and regardless whether those facilities are operated by private companies.

ANALYSIS

Tenn. Code Ann. §41-4-140 provides in pertinent part as follows:

(a) The Tennessee corrections institute has the power and duty to:

* * *

(3) Inspect all local jails, lock-ups, workhouses and detention facilities at least once a year and publish the results of such inspections. . . .

* * *

(c)(1) The minimum standards established pursuant to subsection (a) shall also apply to any jail, lock-up, or workhouse used for the temporary housing or the incarceration of persons convicted or accused of a state or federal criminal offense that is owned or operated in this state by a private person or corporation.

(2) The institute also has the duty to inspect, at least once a year, all such private jails, lock-ups, and workhouses operating in this state that hold prisoners of any Tennessee jurisdiction in the same manner as is provided in subsection (a).

* * *

(4) It is a Class A misdemeanor to operate a private correctional facility in violation of this section. If the operator of a private correctional facility is convicted of violating this subsection and the owner of such facility is a person or corporation other than the operator, such owner shall be prohibited from holding any interest in a company or corporation that is engaged in this state in the temporary housing or the incarceration of persons convicted or accused of a state or federal criminal offense for a period of two (2) years.

(5) The provisions of this section shall not apply to a private correctional facility operated pursuant to chapter 24 of this title, nor to a contract with a political subdivision of the state.

“The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aides to that end.” *Browder v. Morris*, 975 S.W.2d 308, 311 (Tenn. 1998). Where possible, statutes should be read in harmony. *Frazier v. East Tennessee Baptist Hospital*, 55 S.W.3d 925, 928 (Tenn. 2001). “Statutes relating to the same subject or sharing a common purpose must be construed together (‘in pari materia’) in order to advance their common purpose or intent.” *Id.* Whenever possible, legislative intent is to be ascertained from the natural and ordinary meaning of the language used in the statute. “Where the plain language of a statute does not directly address the issue or leads to an absurd result, however, [the courts] will look beyond the language of the statute and adopt a reasonable construction that provides for harmonious operation of the laws.” *Lipscomb v. Doe*, 32 S.W.3d 840, 844 (Tenn. 2000).

Read alone subsection (c)(5) of Tenn. Code Ann. §41-4-140 suggests that private correctional facilities operated pursuant to chapter 24 of Title 41¹ and correctional facilities owned or operated by private companies housing prisoners pursuant to a contract with a political subdivision of the state are exempt from inspection by the TCI. However, that interpretation would mean that local facilities operated by political subdivisions of the state and private facilities not affiliated with a political subdivision are subject to inspection but that facilities owned or operated by private companies pursuant to a contract with a political subdivision of the state are not. This result is contrary to the intent of the statute read as a whole. It is the opinion of this Office that the exemption in subsection

¹Chapter 24 of title 41 covers facilities housing state prisoners operated by private companies pursuant to a contract with the Tennessee Department of Correction.

(c)(5), viewed against the backdrop of the entire statute, the agency interpretation and the legislative history, is simply an exemption from the criminal penalties outlined in subsection (c)(4), not an exemption from inspection altogether.

Local facilities have been subject to inspection by a state agency since July 1, 1973. Chapter 191 of the Public Acts of 1973. Subsection (c) was added effective July 1, 1987. Chap. 258 of the Public Acts of 1987. Minor amendments were made in 1991 and 1996. Chap. 300 of the Public Acts of 1991; Chap. 1079 of the Public Acts of 1996. Although subsection (c)(5) states that “[t]he provisions of *this section* shall not apply” to certain private facilities, for the past sixteen (16) years the agency has understood that exemption to refer only to subsection (c)(4) imposing criminal penalties. (emphasis added). The construction of a statute by those charged with its administration is entitled to substantial deference. *Consumer Adv. Div. v. Greer*, 967 S.W.2d 759, 761 (Tenn. 1998); *Riggs v. Burson*, 941 S.W.2d 44, 50 (Tenn. 1997). Legislative debate makes clear that the intent of the bill was to ensure that the standards that applied to public jails and workhouses also applied to private jails and workhouses. Prompting the legislation was a jail in Coffee County that the General Assembly believed should be inspected. The jail, operated by a private prisoner transportation company, was used for holding prisoners temporarily.

The second question asked is whether the Tennessee corrections institute has the statutory duty to inspect all local detention centers or only those holding county prisoners. Tenn. Code Ann. §41-4-140(a)(3) & (c) requires inspection of all local jails, lock-ups, workhouses and detention facilities at least once a year. The only exemption in the statute is for “state institutions.” Tenn. Code Ann. §41-4-140(a)(4).

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